



This document is scheduled to be published in the Federal Register on 08/21/2012 and available online at <http://federalregister.gov/a/2012-20441>, and on FDsys.gov

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-37

[FMR Case 2012-102-2

Docket 2012-0007; Sequence 1]

RIN 3090-AJ26

Federal Management Regulation; Donation of Surplus Personal Property

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the Federal Management Regulation (FMR) by changing its personal property policy. The proposed changes will (1) include the addition of certain veterans organizations as eligible donation recipients as authorized by Public Law; (2) update and clarify language regarding the use of The United States Government Certificate to Obtain Title to a Vehicle, Standard Form 97 (SF 97); and (3) make minor clarifying edits to existing policies.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before **[Insert date 60 days after publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FMR Case 2012-102-2 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FMR Case 2012-102-2” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FMR Case 2012-102-2.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FMR Case 2012-102-2” on your attached document.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FMR Case 2012-102-2, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), at (202) 501-3828 or by e-mail at robert.holcombe@gsa.gov for clarification of content. For information pertaining to status or publication schedules contact the Regulatory Secretariat at (202) 501-4755. Please cite FMR Case 2012-102-2.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed amendment to part 102-37 of the Federal Management Regulation (41 CFR part 102-37) adds as potential recipients of Federal surplus property those organizations whose membership comprises substantially of veterans, as authorized by Public Law 111-338, codified at 40 U.S.C. § 549(c)(3)(B)(x). This proposed amendment also adds two new subparts to part 102-37. The first proposed subpart updates and clarifies policy for Federal agencies and donation program customers regarding the use of SF 97, The United States Government Certificate to Obtain Title to a Vehicle. This proposed amendment clarifies that the SF 97 itself is not a motor vehicle registration or title; rather, it is only evidence of ownership required for the owner to obtain title to a vehicle. The second proposed subpart clarifies policy for Federal agencies, State Agencies for Surplus Property (SASPs), and donation program customers for insuring donated surplus property for liability or loss. This proposed amendment also contains administrative and minor clarifying changes. One of these administrative changes proposes to remove the policies on how SASPs screen for property at Federal facilities and how SASPs obtain authorizations for screening at these facilities. These sections are deleted as being outdated and unnecessarily prescriptive. Whereas SASP property screeners were previously required to apply to GSA to obtain screening authorization, under the proposed amendment, SASPs no longer need to coordinate with GSA, but instead must coordinate the on-site visit and screening with the individual holding agency or organization. Information related to screening is provided in amended section 102-37.175 and in non-regulatory guidance published by GSA.

B. Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. § 804.

C. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq. This proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. § 553(a)(2) because it applies to agency management and public property. However, this proposed rule is being published to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed

changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. § 3501, et seq.

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. § 801 since it does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 41 CFR part 102-37

Donation of Surplus Personal Property.

Dated: August 6, 2012

/s/

Kathleen M. Turco,
Associate Administrator
Office of Governmentwide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41CFR part 102-37 as set forth below:

PART 102-37—DONATION OF SURPLUS PERSONAL PROPERTY

1. The authority for part 102-37 continues to read as follows:

Authority: 40 U.S.C. 549 and 121(c).

2. Amend § 102-37.25 by alphabetically adding the definition “Allocation” to read as follows:

§ 102-37.25 What definitions apply to this part?

The following definitions apply to this part:

Allocation means the process by which GSA identifies the SASP and/or donee to receive and allow pick up of the surplus property offered under this part.

* * * * *

3. Amend § 102-37.50 by revising paragraph (c) to read as follows:

§ 102-37.50 What is the general process for requesting surplus property for donation?

* * * * *

(c) The American National Red Cross should submit requests to GSA as described in subpart G of this part when obtaining property under the authority of 40 U.S.C. § 551.

* * * * *

§ 102-37.60 [Amended]

4. Amend § 102-37.60 in the first sentence by removing the words “being notified that the property is available for pickup” and adding the words “GSA allocation” in its place.

5. Amend § 102-37.125 by revising paragraph (a) (3) to read as follows:

§ 102-37.125 What are some donations that do not require GSA’s approval?

(a) * * *

(3) Donations by the Small Business Administration (SBA) to small disadvantaged businesses under 13 CFR part 124 (although collaboration and agreement between the SBA, SASPs, and GSA is encouraged); and

* * * * *

6. Amend § 102-37.175 by—

- (a) Removing “GSA’s system, FEDS)” and adding “GSAXcess)” in its place;
- (b) Designating the existing paragraph as paragraph (a); and
- (c) Adding a new paragraph (b) to read as follows:

§ 102-37.175 How does a SASP find out what property is potentially available for donation?

* * * * *

(b) For the SASP (or a SASP's representative) to perform onsite screening, the screener must coordinate the onsite visit and screening with the individual holding agency or organization. The screener should ascertain the identification required and any special procedures for access to the facility or location.

§§ 102-37.180 and 102-37.185 [Removed and Reserved]

7. Remove and reserve §§ 102-37.180 and 102-37.185 .

8. Amend § 102-37.380 by adding paragraph (b)(18) to read as follows:

§ 102-37.380 What is the statutory authority for donations of surplus

Federal property made under this subpart?

* * * * *

(b) * * *

(18) Organizations whose membership comprises substantially veterans (as defined under 38 U.S.C. § 101), and whose representatives are recognized by the Secretary of Veterans Affairs pursuant to the provisions of 38 U.S.C. § 5902. In this subsection, “substantially veterans” means at least 30 percent of the members of the requesting organization are classified as veterans, as that term is defined by 38 U.S.C. § 101. The Department of Veterans Affairs maintains a searchable website of recognized organizations. The address is <http://www.va.gov/ogc/apps/accreditation/index.asp>.

* * * * *

9. Amend §102-37.420 by adding a second and a third sentence to read as follows:

§ 102-37.420 May a SASP grant conditional eligibility to applicants who would otherwise qualify as eligible donees, but have been unable to obtain approval, accreditation, or licensing because they are newly organized or their facilities are not yet constructed?

* * * In situations where there are no approvals, accreditation or licensing entities, the SASP may make a determination on conditional eligibility based on its State Plan and the provisions of this part. Conditional eligibility may be granted for a limited and reasonable time, not to exceed one year.

10. Amend § 102-37.430 by adding a third sentence to read as follows:

§ 102-37.430 What property can a SASP make available to a donee with conditional eligibility?

* * * If property is provided to the donee with conditional eligibility, and the conditional eligibility lapses (see § 102-37.420), the property must be returned to the SASP for redistribution or disposal.

11. Add Subparts I and J consisting of §§ 102-37.585 through 102-37.600 and § 102-37.605 through 102-37.610 respectively to read as follows:

Subpart I—Transfer of Vehicle Title to A Donee

Sec.

- 102-37.585 In transferring donated surplus vehicles, what is the responsibility of the holding agency?
- 102-37.590 In transferring donated surplus vehicles, what is the responsibility of the SASP?
- 102-37.595 When transferring donated surplus vehicles, what is the responsibility of the donee?
- 102-37.600 When does title to a surplus donated vehicle change hands?

Subpart I—Transfer of Vehicle Title to A Donee

§ 102-37.585 In transferring donated surplus vehicles, what is the responsibility of the holding agency?

The holding agency is responsible for preparing The United States Government Certificate to Obtain Title to a Vehicle, (Standard Form 97 (SF 97)) upon notification by GSA that a vehicle has been allocated. The SF 97 may be

prepared by GSA if mutually agreed upon by the holding agency and GSA. The holding agency is designated as the “transferor.” The SF 97 is a serially numbered, controlled form, stock number 7540-00-634-4047, which can be obtained by Federal agencies from GSA Global Supply or online at www.gsaglobalsupply.gsa.gov.

§ 102-37.590 In transferring donated surplus vehicles, what is the responsibility of the SASP?

The SASP is responsible for facilitating the transfer of the surplus vehicle to the donee in accordance with this part. The SASP should not sign the SF 97 as “transferee” unless the vehicle will be used and titled by the SASP.

§ 102-37.595 When transferring donated surplus vehicles, what is the responsibility of the donee?

The donee is responsible for processing the SF 97 in accordance with state licensing and titling authorities. The donee signs the SF 97 as “transferee.” The donee is responsible for notifying the SASP if a SF 97 is not provided by the Government within a reasonable time after vehicle transfer.

§ 102-37.600 When does title to a surplus donated vehicle change hands?

Title to the vehicle rests with the holding agency until the SF 97 is signed by the transferee. At that point, the transferee will hold conditional title until the end of the period of restriction, if applicable, under the terms of the donation.

Subpart J—Insuring Donated Surplus Property

Sec.

102-37.605 Is insurance required for liability purposes?

102-37.610 If there is a property loss covered by insurance, who is entitled to reimbursement?

Subpart J—Insuring Donated Surplus Property

§ 102-37.605 Is insurance required for liability purposes?

Yes, for vehicles, the SASP and/or the transferee must follow state laws for insurance requirements of state owned vehicles and state minimum insurance requirements for other than state owned vehicles. For other assets, insurance must be acquired to at least the minimum amount as mandated by applicable law or regulation.

§ 102-37.610 If there is a property loss covered by insurance, who is entitled to reimbursement?

(a) If the loss occurs while the property is insured and in the possession (or under the control) of the SASP, the SASP may retain proceeds to cover the SASP's costs incurred to acquire and rehabilitate the property prior to its loss. GSA is entitled to proceeds in excess of the costs incurred by the state.

(b) If the loss occurs while the property is insured and in the possession (or under the control) of the donee, the donee may retain proceeds to cover the costs that the donee incurred to acquire and rehabilitate the property prior to its loss. Entitlement to insurance proceeds in excess of the costs incurred by the donee depends on the time of the loss in relation to the period of restriction if the loss was incurred:

(1) During the period of restriction imposed by GSA (e.g., typically up to the first year unless otherwise designated), the U.S. Government is entitled to the insurance proceeds, less any interest provided by the Government to the SASP

to cover the SASP's expenses in enforcing the restriction up to the time of the loss.

(2) During an additional period of restriction imposed by the SASP (e.g., beyond the one year usually imposed by GSA), the SASP is entitled to the proceeds.

(3) After all periods of restriction imposed by the GSA and/or SASP, the donee is entitled to the proceeds.

12. Amend Appendix C to part 102-37 by alphabetically adding the definition of "Veterans Organizations" to read as follows:

Appendix C to Part 102-37—Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations

* * * * *

Veterans Organizations means organizations eligible to receive Federal surplus property under Public Law 111-338, as codified at 40 U.S.C. § 549(c)(3)(B)(x), whose (1) membership comprises substantially veterans (as defined under 38 U.S.C. §101); and (2) representatives are recognized by the Secretary of Veterans Affairs under 38 U.S.C. § 5902. The Department of Veterans Affairs maintains a searchable website of recognized organizations. The address is <http://www.va.gov/ogc/apps/accreditation/index.asp>.

[Billing Code 6820-14]

[FR Doc. 2012-20441 Filed 08/20/2012 at 8:45 am; Publication Date: 08/21/2012]